

ROBERT AND PATRICIA BAILEY ET AL.

IBLA 84-874 et al.

Decided November 22, 1985

Consolidated appeals from decisions of the Bureau of Land Management, Alaska State Office, determining that equitable title vested in Public Land Order No. 1613 applicants, approving issuance of patents, and rejecting Alaska State selection A-061179, in part, and conflicting Public Land Order No. 1613 applications. A-063457, et al.

Affirmed.

1. Act of Aug. 1, 1956--Patents of Public Lands: Generally--Public Lands: Alaska--Public Sales: Preference Rights--Withdrawals and Reservations: Revocation and Restoration

Equitable title vests in preference right applicants for public lands, restored in accordance with 43 U.S.C. § 971a through e (1982) and Public Land Order No. 1613, when they have paid the purchase price and received a receipt from BLM, and BLM may properly grant them patents even though they have subsequently sold the lands adjoining the public lands.

APPEARANCES: Donald D. Hopwood, Esq., of Anchorage, Alaska, for appellants; 1/ Robert C.

Babson, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

1/ For appearances on behalf of other appellants, see Appendix A. Under the circumstances, we do not decide whether all of these appearances conform to the requirements of 43 CFR 1.3 governing who may practice before the Department.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

In 1949, in order to protect the roads that promoted the development of the Territory of Alaska, the Department of the Interior withdrew 150 feet of public lands along both sides of several "through roads," including the Glenn, Richardson, and Haines highways. 2/ Congress criticized these withdrawals as excessive, stating that they hindered commercial and private development, and, in 1956, enacted a law providing that if the Secretary revoked such a withdrawal "the lands involved shall be subject to disposal only under laws specified by the Secretary of the Interior, subject to easements as established by the Secretary." 3/ The law authorized the Secretary to "sell such restored lands for not less than their appraised value, giving an appropriate preference right to the holders of adjoining claims or entries and to owners of adjoining private lands." 4/

In 1958 the Department issued PLO 1613 revoking the earlier withdrawals, replacing them with easements, offering for sale "the lands released from withdrawal * * * which, at the date of this order, adjoin lands in private ownership," and providing that released lands which on the same date "adjoin lands in valid unperfected entries, locations or settlement claims,

2/ Public Land Order No. (PLO) 601, Aug. 10, 1949, 14 FR 5048 (Aug. 16, 1949); see also PLO 757, Oct. 16, 1951, 16 FR 10749.

3/ 43 U.S.C. § 971a (1982).

4/ 43 U.S.C. § 971b (1982). The purpose of the law was to "permit the disposal of lands restored from [such] withdrawals * * * in such a manner as to recognize the equities of those landowners who have acquired lands abutting such withdrawals prior to their restoration." S. Rep. No. 2641, 84 Cong., 2d Sess., reprinted in 1956 U.S. Code Cong. & Ad. News 4052. 43 U.S.C. § 971a also authorizes the Secretary to permit amendment of the land description of an unpatented claim or entry on adjoining land to include restored lands, notwithstanding any statutory limitation on the area which may be included in such a claim or entry.

shall be subject to inclusion in such entries, locations and claims." 5/ Owners of private lands and holders of such entries were given a preference right to purchase the adjoining released lands or to amend their entries to include them, respectively, for which they could apply any time after the date of the order by giving notice to the Bureau of Land Management (BLM). Failure to pay for the land or to make any required payments would cause a preference right claimant to lose his preference.

Many adjoining landowners or entry holders applied for the released lands located between the adjoining lands and the centerline of the highway, made the required payments, and received receipts, but their applications were not processed further for many years. 6/ Many who applied subsequently sold the lands adjoining the released lands. In August 1984 BLM issued decisions granting the released lands to the original applicants. 7/ In

5/ PLO 1613, Apr. 7, 1958, 23 FR 2376 (Apr. 11, 1958). Entries, locations and claims specifically named as included in Paragraph 8 of PLO 1613 were certificates to purchase under the Alaska Public Sale Act, 48 U.S.C. § 364a through e, (see 43 U.S.C. §§ 687b-687b-5, repealed by § 703(a), P.L. 94-579 90 Stat. 2789), and leases with option to purchase under the Small Tract Act, 43 U.S.C. § 682a, repealed by § 702, P.L. 94-579, 90 Stat. 2787.

6/ An adjoining landowner's application form read:

"I am the owner of the land described below and hereby make application to purchase the land lying between my property and the centerline of the Glenn Highway. I understand that patent, when issued, will be subject to an easement on this land for highway purposes, and to any other valid existing rights. I also understand that patent to the land between my property and the highway centerline will not be issued until the land has been surveyed and the plat of survey is filed in the Anchorage District and Land Office. I further understand that it is my responsibility to keep the Anchorage District and Land Office informed of any change of my address or transfer of title."

7/ In early November 1984, BLM published a legal notice of the list of the applications approved in the August decisions and mailed the notice to current owners of the adjoining lands. The notice gave current owners until Dec. 15, 1984, to file appeals. Because of our disposition of these appeals we need not decide whether the notice complies with 43 CFR 4.411(a) or whether persons who were served with the August decisions could file an appeal until Dec. 15, 1984, in accordance with the notice.

these consolidated appeals, present adjoining landowners claim the released lands should have been granted to them.

Appellants argue that Congress intended that the released lands be granted to owners of adjoining lands and that when the original applicants for the released lands sold their adjoining lands to appellants they intended to convey their rights to the released lands along with the adjoining lands. The released lands are important, and sometimes essential, to the present owners of the adjoining lands for access to those lands, appellants argue, and of no practical use to the original applicants, some of whom are deceased persons or dissolved corporations. Failure to grant them legal title to the released lands between the highway and their adjoining lands will cause great hardship, appellants claim.

BLM's decisions state that when the "purchase price was received * * * and a receipt for the purchase price was issued * * * equitable title vested in the applicant * * *." Equitable title vests then under 43 U.S.C. § 971b and PLO 1613, BLM states, because under the analogous provisions of the Isolated Tracts Act, 43 U.S.C. § 1171 (repealed by section 703(a), Federal Land Policy and Management Act of 1976, 90 Stat. 2789), it vests when a preference right applicant has tendered the purchase price and been issued a cash certificate by the Department. Willcoxson v. United States, 313 F.2d 884 (D.C. Cir.), cert. denied, 373 U.S. 932 (1963). 8/ Once equitable title vests, in BLM's view, "the Secretary has no discretion in the issuance of a patent and events subsequent to such vesting can have no bearing upon the

8/ BLM Answer at 7.

claimant's right to patent," citing Wyoming v. United States, 255 U.S. 489 (1921). ^{9/}

[1] BLM's decisions must be affirmed. The language of the Act involved gives the Secretary the discretion to sell the released lands to adjoining landowners and to permit the holders of unperfected claims on adjoining lands to amend their land descriptions to include released lands. The language of 43 U.S.C. §§ 971a and 971b is that the Secretary "may sell" the restored lands and "may permit the amendment" of land descriptions to include them. Like the Isolated Tracts Act, supra, and unlike the statutes involved in the cases cited by appellants (e.g., Payne v. Central Pacific Railway Co., 255 U.S. 228 (1921)), the Act does not entitle one to rights in lands if he proves he meets the statutory requirements, but authorizes the Secretary to take action in his discretion. Willcoxson v. United States, supra at 888; Lewis v. Udall, 374 F.2d 180 (9th Cir. 1967); Estate of Lyle K. Gross, 77 I.D. 174 (1970); Jack H. Stockstill, 1 IBLA 278 (1971). In PLO 1613 the Secretary specified what a preference right claimant must do: give notice to BLM and pay for the land within the time specified by BLM. Once a claimant did these things and BLM accepted the payment and issued the receipt for the purchase price, his equitable title to the released land he applied for vested. The United States is therefore obligated to perform its duty to issue the patent, after completion of the appropriate survey and other ministerial acts. Benson Mining Co. v. Alta Mining Co., 145 U.S. 428 (1892). Whether the claimant (or his successor) intended to convey--or will be deemed to have conveyed--the released land when he sold his adjoining lands during

^{9/} Id.

the pendency of the claim is a matter of state law dependent on the circumstances of the transaction, 10/ not a matter for the Department to adjudicate. Finally, we must observe that although the delay in acting on the applications has certainly inconvenienced appellants, it was not for their benefit that the statute was enacted but rather for "landowners who * * * acquired lands abutting [the] withdrawals prior to their restoration," i.e., for the original applicants. 11/ BLM's decisions are therefore consistent both with applicable case law and with the intent of Congress.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Franklin D. Arness
Administrative Judge

10/ See for example, Willis v. City of Valdez, 546 P.2d 570, 575 (Alaska) 1976); Sabo v. Horvath, 559 P.2d 1038, 1041-42 (Alaska 1976).

11/ Sen. Rep. No. 2641, supra note 4.

(editor's note: the original attachment was done in landscape; the following conversion was formatted to fit each of the original pages on two pages and has been numbered accordingly.)

IBLA 84-874, et al.

APPENDIX A

<u>IBLA</u> <u>Case No.</u>	<u>Appellant</u>	<u>BLM</u> <u>Case No.</u>
1. 84-875	Lige & Ruth Wierzbicki	A-063521
2. 84-876	Carolyn & Joseph Vallieres; John and Dorothy Liska	A-063459
3. 84-877	Wayne Cousineau	A-063526
4. 84-878	A & S Construction, Inc.	A-063525
5. 84-879	Salvatore Aiello & Wayne Cousineau	A-063455
6. 84-880	William E. & Jeannette Knowlton	A-063455
7. 84-881	William E. & Jeannette Knowlton	A-063452
8. 84-882	William E. & Jeannette Knowlton	A-063453
9. 84-883	Harold V. & Marga M. Jurgensen	AA-3794
10. 84-884	Rogers & Babler (conflicts with AA-51038)	A-063462

<u>IBLA Case No.</u>	<u>PLO 1613 Applicant</u>	<u>Appearances for Appellants</u>
1. 84-875	Gilbert A. Henkens, Jr.	M. Ashby Dickerson, Esq. of Anchorage, Alaska
2. 84-876	Janelle F. Lamay	John & Dorothy Liska <u>pro sese</u> ; Carolyn & Joseph Vallieres, <u>pro sese</u> .
3. 84-877	E. G. Fenn	Wayne Cousineau, <u>pro se</u> .
4. 84-878	Gilbert A. Henkens, Jr.	Salvatore Aiello, president, A & S Construction Co., Inc.
5. 84-879	Matanuska Telephone Association, Inc.	Salvatore Aiello & Wayne Cousineau, <u>pro sese</u> .
6. 84-880	Ralph M. Anderson	William E. & Jeannette M. Knowlton, <u>pro sese</u> .
7. 84-881	Ralph & Lavenia Doyle	William E. & Jeannette M. Knowlton, <u>pro sese</u> .
8. 84-882	Ralph M. Anderson	William E. & Jeannette M. Knowlton, <u>pro sese</u> .
9. 84-883	William J. Hendrickson	Harold V. & Marga M. Jurgensen, <u>pro sese</u> .
10. 84-884	Virgil D. & Lou B. Stone	Michael W. Price, Esq. of Anchorage, Alaska
11. 84-904	McKinley Heights, Inc.	Jay D. & Florence Kay Williams, <u>pro sese</u> .

<u>IBLA Case No.</u>	<u>Appellant</u>	<u>BLM Case No.</u>
11. 84-904	Jay D. & Florence Kay Williams	A-063471
12. 85-21	Arthur F. Wallace	A-063495
13. 85-24	Kathryn Dawson	A-063464
14. 85-128	R. L. Pellissier	A-063469
15. 85-129	R. L. Pellissier	A-063470
16. 85-130	Forest E. & Mary M. Burlew	A-063529
17. 85-138	John C. & Barbara L. Franklin	A-063498
18. 85-139	Chugiak-Eagle River Industries	A-063477 A-063478
19. 85-140	MaryAnn C. Yoakum	A-063528
20. 85-174	Peters Creek Chapel, Inc.	A-063481 A-063482
21. 85-175	L. G. Gardner	A-063497
22. 85-186	Kit J. & Dillia Vercella	A-063527
23. 85-198	Billy E. & Pat M. McGowen	A-063513 A-063514

<u>IBLA</u> <u>Case No.</u>	<u>PLO 1613</u> <u>Applicant</u>	<u>Appearances for</u> <u>Appellants</u>
12. 85-21	Einer Huseby	Thillman F. Wallace
13. 85-24	Gene E. & Rugh Ann Needels	Kathryn Dawson, <u>pro se.</u>
14. 85-128	Gordon H. Lee	R. L. Pellissier, <u>pro se.</u>
15. 85-129	McKinley Heights, Inc.	R. L. Pellissier, <u>pro se.</u>
16. 85-130	General Supply Company, Inc.	Forest E. & Mary M. Burlew, <u>pro sese.</u>
17. 85-138	Harry Goudchaux	John C. & Barbara L. Franklin, <u>pro sese.</u>
18. 85-139	William H. Stephens, Jr. Cleda A. Stephens	Ruth Callan, Office Mgr., Chugiak Eagle River Industries
19. 85-140	Gilbert A. Henkens, Jr.	MaryAnn Yoakum, <u>pro se.</u>
20. 85-174	Victory Tabernacle, Inc. Joann C. Jensen	Robert J. Byron of Chugiak, Alaska
21. 85-175	Clarence C. Call	L. G. Gardner, <u>pro se.</u>
22. 85-186	Gilbert A. Henkens, Jr.	Kit J. & Dilia Vercella, <u>pro sese.</u>
23. 85-198	Robert E. & Katherin G. Fleming	Ray D. Gardner, Esq. of Anchorage, Alaska
		Harold P. Groseth

<u>IBLA</u> <u>Case No.</u>	<u>Appellant</u>	<u>BLM</u> <u>Case No.</u>
24. 85-200	Jeff & Darlene Hunter Gary & Donna Young	A-063521
25. 85-201	Harold & Marga Jurgensen	AA-3794
26. 85-207	Bruce A. & Melody G. Swanson	A-063449
27. 85-208	Lawrence D., Cecillia M., & George M. Allen	A-063449
28. 85-209	Roland N. & Marie S. Ericson	A-063483
29. 85-210	James A. Stokes (conflicts with AA-05976)	A-063502
30. 85-211	Burton Carver & Co., Inc.	A-063510
31. 85-212	Estate of William G. Knight A-063517	A-063511
32. 85-213	William H. Martin	A-064410
33. 85-214	Estate of Ray Allen Williams	A-064413
34. 85-231	Samuel S. & Christine S. Taylor	A-063525

<u>IBLA Case No.</u>	<u>PLO 1613 Applicant</u>	<u>Appearances for Appellants</u>
24. 85-200	Gilbert A. Herkens, Jr.	Jeff & Darlene Hunter, <u>pro sese.</u> Gary & Donna Young, <u>pro sese.</u>
25. 85-201	William J. Hendrickson	Harold V. & Marga M. Jurgensen, <u>pro sese.</u>
26. 85-207	First Baptist Church of Birchwood	Bruce A. & Melody G. Swanson, <u>pro sese.</u>
27. 85-208	Herman O. Boyman	Lawrence D., Cecilia M. & George M. Allen, <u>pro sese.</u>
28. 85-209	Mont S. Johnson, Jr.	Roland N. & Marie S. Ericson, <u>pro sese.</u>
29. 85-210	Herbert S. Johnson, Jr.	James A. Stokes, <u>pro se.</u>
30. 85-211	William G. & Theo. E. Knight	Dave R. Christianson, Esq., Anchorage, Alaska
31. 85-212	Clarence C. Call Pearl M. Johnson	Ashley Schmiedeskamp, Rainier Bank, Anchorage, Alaska
32. 85-213	Geneveive M. Hayes	William H. Martin, <u>pro se.</u>
33. 85-214	Glen Griffin	Roger R. Williams, P.R. for Estate
34. 85-231	Gilbert A. Henkens, Jr.	Samuel S. & Christine S. Taylor, <u>pro sese.</u>

<u>IBLA</u> <u>Case No.</u>	<u>Appellant</u>	<u>BLM</u> <u>Case No.</u>
35. 85-232	Frieda Rokita	A-063470
36. 85-233	James A. Stokes	A-063504
37. 85-234	Claire C. Morton	A-063476
38. 85-255	Frank F. Mullins; Jonathan Bettridge	A-063465
39. 85-598	Bruce A. Swanson (conflicts with AA-6661A; AA-54873	AA-54199
89 IBLA 378-1		

<u>IBLA Case No.</u>	<u>PLO 1613 Applicant</u>	<u>Appearances for Appellants</u>
35. 85-232	McKinley Heights, Inc.	Frieda Rokita, <u>pro se</u> .
36. 85-233	Daniel & Margaret Berg <u>pro se</u> .	James A. Stokes,
37. 85-234	Saima E. Ising <u>pro se</u> .	Claire C. Morton,
38. 85-255	McKinley Heights, Inc.	Frank F. Mullins, <u>pro se</u> .
39. 85-598	Christa L. Burg <u>pro se</u> .	Bruce A. Swanson,

